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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HANGINOUT, INC., a Delaware corporation, <div style="text-align: center;">Plaintiff,</div> v. GOOGLE, INC., a Delaware corporation, <div style="text-align: center;">Defendants. </div>))))))))))	Civil No. 13cv2811 AJB (NLS) <div style="text-align: center;">ORDER GRANTING JOINT MOTION AND SETTING EARLY NEUTRAL EVALUATION CONFERENCE</div> [Doc. No. 16]
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The court received a Joint Motion to hold, in advance of the normal timeline, an Early Neutral Evaluation Conference. For good cause shown, the court **GRANTS** the motion. **IT IS ORDERED** that an Early Neutral Evaluation of your case will be held on **February 27, 2014** at **2:30 p.m.** in the Chambers of Magistrate Judge Nita L. Stormes, United States Courthouse Annex, 333 West Broadway, Suite 1210, San Diego, California 92101.

The following are **mandatory** guidelines for the parties preparing for the Early Neutral Evaluation Conference.

1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation Conference (“ENE”) is to permit an informal discussion between the attorneys, parties, and the settlement judge of every aspect of the lawsuit in an effort to achieve an early

1 resolution of the case. All conference discussions will be informal, off the record,
2 privileged and confidential. Counsel for any non-English speaking parties is responsible
3 for arranging for the appearance of an interpreter at the conference.

4 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for
5 insured defendants, and other representatives of a party having full and complete
6 authority to enter into a binding settlement, and the principal attorneys responsible for the
7 litigation, must be present **in person** and legally and factually prepared to discuss
8 settlement of the case. Full authority to settle means that the individuals at the ENE be
9 authorized to fully explore settlement options and to agree at that time to any settlement
10 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871
11 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion and
12 authority” to change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216
13 F.R.D. 481, 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with
14 unlimited settlement authority to attend the conference is that the person’s view of the
15 case may be altered during the face-to-face conference. *Pitman*, 216 F.R.D. at 486.
16 Limited or sum certain authority is not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d
17 590, 595-597 (8th Cir. 2001). **Counsel appearing without their clients (whether or not
18 counsel has been given settlement authority) will be cause for immediate imposition
19 of sanctions and will also result in the immediate termination of the conference.**

20 3. **Full Settlement Authority Required:** In addition to counsel who will try
21 the case, a party or party representative with **full settlement authority** must be present
22 for the conference. In the case of a corporate entity, an authorized representative of the
23 corporation who is **not** retained outside counsel must be present and must have
24 discretionary authority to commit the company to pay an amount up to the amount of the
25 plaintiff’s prayer (excluding punitive damage prayers). The purpose of this requirement
26 is to have representatives present who can settle the case during the course of the
27 conference without consulting a superior. Counsel for a government entity may be
28 excused from this requirement so long as the government attorney who attends the ENE

1 conference (1) has primary responsibility for handling the case; and (2) may negotiate
2 settlement offers which the attorney is willing to recommend to the government official
3 having ultimate settlement authority.

4 4. **Confidential ENE Statements Required:** No later than **three court days**
5 before the ENE, the parties shall submit confidential statements of five pages or less
6 directly to the chambers of Magistrate Judge Stormes outlining the nature of the case, the
7 claims, and the defenses. **These statements shall not be filed or served on opposing**
8 **counsel.** They can be lodged via email at efile_stormes@casd.uscourts.gov. If exhibits
9 are attached and the total submission amounts to more than 20 pages, a hard copy must be
10 delivered directly to chambers.

11 5. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel
12 shall give notice of the ENE to parties responding to the complaint after the date of this
13 notice.

14 6. **Case Management Under the Amended Federal Rules:** In the event the
15 case does not settle at the ENE, the parties can expect to leave the ENE with Rule 26
16 compliance dates or deadlines. Parties shall therefore be prepared to discuss the
17 following matters at the conclusion of the ENE conference:

- 18 a. Any anticipated objections under Federal Rule of Civil Procedure
19 26(a)(1)(E) to the initial disclosure provisions of Federal Rule of Civil
20 Procedure 26(a)(1)(A-D);
- 21 b. The scheduling of the Federal Rule of Civil Procedure 26(f)
22 conference within 24 days following the ENE:
- 23 c. The date of initial disclosure and the date for lodging the discovery
24 plan within 14 days following the Rule 26(f) conference; and,
- 25 d. The scheduling of a Case Management Conference pursuant to
26 Federal Rule of Civil Procedure 16(b) within 21 days following the
27 Rule 26(f) conference.

28 The Court will issue an order following the ENE addressing these issues and setting dates

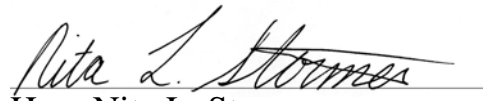
1 as appropriate.

2 7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires
3 that an ENE take place within 45 days of the filing of the first answer. Requests to
4 continue ENEs are rarely granted. However, the Court will consider formal, written *ex*
5 *parte* requests to continue an ENE conference when extraordinary circumstances exist
6 that make a continuance appropriate. In and of itself, having to travel a long distance to
7 appear in person is not “extraordinary.” Absent extraordinary circumstances, requests for
8 continuances will **not be considered unless submitted in writing** no less than seven (7)
9 days prior to the scheduled conference.

10 Questions regarding this case or the mandatory guidelines set forth herein may be
11 directed to the Magistrate Judge's law clerks at (619) 557-5391.

12 A Notice of Right to Consent to Trial Before a United States Magistrate Judge is
13 attached for your information.

14 DATED: January 31, 2014

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16 Hon. Nita L. Stormes
17 U.S. Magistrate Judge
18 United States District Court
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1 **NOTICE OF RIGHT TO CONSENT TO TRIAL**
2 **BEFORE A UNITED STATES MAGISTRATE JUDGE**
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5 IN ACCORDANCE WITH THE PROVISIONS OF 28 U.S.C. § 636(c), YOU
6 ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE JUDGE OF THIS DISTRICT
7 MAY, UPON THE CONSENT OF ALL PARTIES, ON FORM 1A AVAILABLE IN
8 THE CLERK'S OFFICE, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A
9 JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL
10 JUDGMENT. COUNSEL FOR THE PLAINTIFF SHALL BE RESPONSIBLE FOR
11 OBTAINING THE CONSENT OF ALL PARTIES, SHOULD THEY DESIRE TO
12 CONSENT.
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14 YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT
15 TO CONSENT IS ENTIRELY VOLUNTARY. ONLY IF ALL PARTIES CONSENT
16 WILL THE JUDGE OR MAGISTRATE JUDGE TO WHOM THE CASE HAS BEEN
17 ASSIGNED BE INFORMED OF YOUR DECISION.
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19 JUDGMENTS OF THE U.S. MAGISTRATE JUDGES ARE APPEALABLE TO
20 THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND
21 THE FEDERAL RULES OF APPELLATE PROCEDURE.
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